

01-18-05

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26371 7590 10/20/2004

FOLEY & LARDNER LLP
 777 EAST WISCONSIN AVENUE
 SUITE 3800
 MILWAUKEE, WI 53202-5308

01/19/2005 YPOLITE2 00000066 09909497

01 FC:1501	1400.00 OP
02 FC:1504	300.00 OP



APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,497	07/20/2001	Peter Bauerlein	1201-01	4174

TITLE OF INVENTION: NI/METAL HYDRIDE SECONDARY ELEMENT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1370 \$1400	\$300	\$1690 \$1700	01/21/2005
EXAMINER	ART UNIT		CLASS-SUBCLASS		
YUAN, DAH WEI D	1745		429-223000		

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
 "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
 (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 Foley & Lardner LLP

2 _____
 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Varta Automotive Systems GmbH

Germany

Please check the appropriate assignee category or categories (will not be printed on the patent): Individual Corporation or other private group entity Government

4a. The following fee(s) are enclosed:

4b. Payment of Fee(s):

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 Publication Fee (No small entity discount permitted)
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 A check in the amount of the fee(s) is enclosed. Payment by credit card. Form PTO-2038 is attached. The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number 06-1447 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

 a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature Marcus W. Sprow

Date January 14, 2005

Typed or printed name Marcus W. Sprow

Registration No. 48,580

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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Application Serial No. 09/909,497

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bauerlein, Peter
Title: NI/METAL HYDRIDE
SECONDARY ELEMENT
Appl. No.: 09/909,497
Filing Date: 07/20/2001
Examiner: Dah-Wei D. Yuan
Art Unit: 1745
Confirmation No.: 4164
Atty. Dkt. No.: 054821-0852

CERTIFICATE OF EXPRESS MAILING	
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Roberta A. Cooper (Printed Name)	
<i>Roberta A. Cooper</i> (Signature)	

TRANSMITTAL

Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith are the following documents for the above-identified application:

- Issue Fee Transmittal (1 page).
- Form PTOL-85(B) (1 page).
- Comments on Statement of Reasons for Allowance (3 pages).

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 1/14/2005

By Marcus W. Sprow

FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (414) 297-5564
Facsimile: (414) 297-4900

Marcus W. Sprow
Attorney for Applicant
Registration No. 48,580



Application Serial No. 09/909,497

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bauerlein, Peter
Title: NI/METAL HYDRIDE SECONDARY ELEMENT
Appl. No.: 09/909,497
Filing Date: 07/20/2001
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Roberta A. Cooper (Printed Name)	
<i>Roberta A. Cooper</i> (Signature)	

ISSUE FEE TRANSMITTAL

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Enclosed herewith please find Issue Fee Transmittal Form PTOL-85(B) along with a check in the amount of \$1,700.00 for payment of the Issue Fee and the Publication Fee.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.18, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Respectfully submitted,

Date 1/14/2005

By Marcus W. Sprow

Marcus W. Sprow
Attorney for Applicant
Registration No. 48,580

FOLEY & LARDNER LLP
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Application Serial No. 09/909,497

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Applicant: Bauerlein, Peter
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Roberta A. Cooper (Printed Name)	
<i>Roberta A. Cooper</i> (Signature)	

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication is responsive to the Notice of Allowance dated July 29, 2003 concerning the above-referenced patent application.

The Examiner stated the following:

The invention of independent claim 1 recites a Ni/metal hydride secondary battery comprising a negative electrode comprising a hydrogen storage alloy, an alkaline electrolyte and a positive electrode comprising a mixture of nickel hydroxide, cobalt oxide and an aluminum compound, wherein the aluminum compound is provided as a coating of Al(OH)₃ on the surface of at least one of the positive electrode and the nickel hydroxide when the battery is charged. The closest prior arts of record, Hayashi and Yano, do not teach or suggest the positive electrode comprising a bulk material mixture of nickel hydroxide, cobalt oxide and an aluminum compound as recited in the claim. The invention of independent claim 9 recites a Ni/metal hydride secondary battery comprising a negative electrode comprising a hydrogen storage alloy, an alkaline electrolyte and a positive electrode comprising a mixture of



nickel hydroxide, cobalt oxide and an aluminum compound selected from the group consisting of a aluminum oxide and aluminum hydroxide in powder form, wherein the aluminum compound becomes dissolved into the electrolyte and modifies surface portions of the positive electrode when the battery is charged. The closest prior arts of record, Hayashi and Yano, do not teach or suggest the positive electrode comprising a bulk material mixture of nickel hydroxide, cobalt oxide and an aluminum compound selected from the group consisting of a aluminum oxide and aluminum hydroxide in powder form a Ni/metal hydride secondary battery. The invention of independent claim 10 recites a Ni/metal hydride secondary battery comprising a negative electrode comprising a hydrogen storage alloy, an alkaline electrolyte and a positive electrode comprising a mixture of nickel hydroxide, cobalt oxide and an aluminum compound, wherein the aluminum compound becomes dissolved into the electrolyte and form a film of Al(OH)_3 on surface portions of the positive electrode when the battery is charged. The closest prior arts of record, Hayashi and Yano, do not teach or suggest the positive electrode comprising a bulk material mixture of nickel hydroxide, cobalt oxide and an aluminum compound, wherein a film of Al(OH)_3 on surface portions of the positive electrode is formed when the battery is charged. The invention of independent claim 12 recites a method of forming an active positive electrode in a battery comprising mixing nickel hydroxide, cobalt oxide and a powder of an aluminum compound to form a bulk material, causing portions of the aluminum compound to dissolve into the electrolyte by charging the battery and forming a film of Al(OH)_3 on the surface portions, thereby activating the positive electrode. The closest prior arts of record, Hayashi and Yano, do not teach or suggest a method of forming an active positive electrode comprising mixing the bulk material of nickel hydroxide, cobalt oxide and an aluminum compound and forming a film of Al(OH)_3 on surface portions of the positive electrode when the battery is charged.

While the Applicants agree that the allowed claims recite a combination of subject matter that is patentable over the cited references, the Applicants do not necessarily agree with or acquiesce in the statement of reasons for allowance given by the Examiner. Moreover, the Applicants note that the recited subject matter as well as various other subject matter and/or combinations of subject matter may be patentable for other reasons than those given by the Examiner. The Applicants expressly reserve the right to set forth additional and/or alternative reasons for patentability and/or allowance in connection with the present Application or in any other future proceeding.



Application Serial No. 09/909,497

REMARKS

These Comments on Statement of Reasons for Allowance under 37 C.F.R. § 1.104 is intended to be responsive to the Notice of Allowance dated October 20, 2004.

Respectfully submitted,

Date 1/14/2005

By 

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